

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3215
—
(202) 326-7900
FACSIMILE:
(202) 326-7999

April 19, 2024

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *In re Google Digital Antitrust Litigation*, No. 1:21-md-03010 (PKC)
[rel. 1:21-cv-3446; 1:23-cv-5177]

Dear Judge Castel:

Pursuant to Pre-Trial Order No. 10 (“PTO 10”), MDL Dkt. 736, plaintiffs Associated Newspapers, Ltd., Mail Media, Inc. (together, “Daily Mail”), and Gannett Co., Inc. seek leave to file the attached Amended Complaints. Daily Mail’s proposed Second Amended Complaint is attached as Exhibit A, and a redline to Daily Mail’s current complaint is attached as Exhibit B. Gannett’s proposed First Amended Complaint is attached as Exhibit C and a redline to Gannett’s current complaint is attached as Exhibit D. There is no conference scheduled at this time.

The proposed amended complaints would not impact the scope of discovery. The Google conduct to which Daily Mail’s and Gannett’s proposed amendments relate have been part of both cases since they were filed three years and one year ago, respectively. Google already has produced discovery relevant to these amended allegations and Google witnesses already have given deposition testimony related to the conduct. And although Google still owes Plaintiffs additional discovery related to its deceptive practices, that discovery was requested many months ago and compliance with those requests would not expand, but would merely fulfill Google’s existing discovery obligations. In November of 2023, the State of Texas and other plaintiffs in the now-remanded *Texas v. Google, LLC*, No. 4:20-cv-957 (E.D. Tex.), propounded several document requests on Google seeking information related to those States’ claims challenging Google’s deceptive practices. On January 11, 2024, MDL Plaintiffs requested that Google reproduce those documents in this proceeding. Yesterday, at a hearing before the Special Master overseeing discovery in the *Texas* case, Google said it already had collected and reviewed documents responsive to the States’ November 2023 requests and was nearly finished producing those documents to the States. In compliance Plaintiffs’ request for those documents, Google should now reproduce those documents in this MDL.

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

The Honorable P. Kevin Castel

April 19, 2024

Page 2

Nor will the addition of these amendments delay these proceedings. Fact discovery ends on June 28, and neither Daily Mail nor Gannett seek to extend that deadline in relation to these amended allegations. So long as Google timely complies with its discovery obligations, the parties will complete fact discovery by the Court-ordered June 28 deadline.

Pursuant to Paragraph 6 of Pre-Trial Order No. 10, and as Daily Mail and Gannett suggested in their response to Google's pre-motion to dismiss letter, MDL Dkt. No. 728, Daily Mail and Gannett agree with the Court's proposal to "defer[] briefing" on the sufficiency of Daily Mail's and Gannett's state law claims "until the summary judgment stage." PTO 10 ¶ 5. As explained above, because fact discovery is nearly over, there are no discovery efficiencies to be gained through any motion to dismiss those state law claims. The Court should wait to rule on Daily Mail's and Gannett's state law claims until summary judgment, when it will have the benefit of a fuller factual record, and there is no risk of the Court ruling on Daily Mail's and Gannett's state law claims twice: once on a motion to dismiss and again at summary judgment.

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

The Honorable P. Kevin Castel

April 19, 2024

Page 3

Respectfully submitted,

/s/ John Thorne

John Thorne
Daniel G. Bird
Bethan R. Jones
Christopher C. Goodnow
Mark P. Hirschboeck
Eliana Margo Pfeffer
Eric J. Maier
Sven E. Henningson
Tiberius T. Davis
KELLOGG, HANSEN, TODD, FIGEL
& FREDERICK, P.L.L.C.
1615 M Street NW
Suite 400
Washington, DC 20036
Tel.: (202) 326-7900
Fax: (202) 326-7999
Email: jthorne@kellogghansen.com
dbird@kellogghansen.com
bjones@kellogghansen.com
cgoodnow@kellogghansen.com
mhirschboeck@kellogghansen.com
epfeffer@kellogghansen.com
emaier@kellogghansen.com
shenningson@kellogghansen.com
tdavis@kellogghansen.com

*Counsel for Associated Newspapers, Ltd., Mail
Media, Inc., and Gannett Co., Inc.*

cc: All Counsel of Record via ECF